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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6395 OF 2000

Shri. Premraj Jugraj Bayad,
Age adult, Occ. Service,
R/o. 18/208, Netaji Nagar,
Pune 411 048. ... Petitioner

Versus

Sr. Regional Manager,
Food Corporation of India and Ors.. Respondents

Mr. R.S. Apte for the Petitioner.

Mr.P.M. Pradhan for Respondents.

CORAM: F.I. REBELLO &
S.J.VAZIFDAR,JJ.
DATED: MARCH 01, 2007

P.C.:

. Petitioner was in the service of Respondent No. 3. Pursuant to the chargesheet by order dated 13.3.1991, the following order was passed :

> "Now therefore, the undersigned in exercise of the power conferred on him by Regulation 59 of the FCI (Staff) Regulations, 1971, hereby imposes a penalty of reversion to the post of A.G.II (A/cs) and reduction of his pay to the minimum of the scale of A.G.II (A/cs.) on Shri. P.J. Bayad, A.G.I. (A/cs). He will work in the reverted capacity till he is found fit for promotion

by the Competent Authority."

. The Petitioner thereafter was selected for promotion by order dated 4.10.1994. The Petitioner did not accept the promotion though office order was issued on 20.10.1994. By letter of 25.10.1994, the Petitioner came to be promoted in the year 1996. Petitioner did not accept the promotion as he was posted at the place other than which he wanted to be posted.

. On 22.1.1996 Petitioner made a representation, that as he was found fit for promotion, by order dated 4.10.1994, that he be restored to the scale. In answer to that, memorandum was issued on 16.8.1996. We may gainfully reproduce the same :

> "With reference to his appeal dated 11/6/96 to restore pay in the scale of AG.I(A/cs), Shri. P.J. Bayad, AG.II(A.cs) is informed that the penalty of reduction to the post of AG.II(A/cs) and the pay at the minimum of the scale of AG.ii(A/cs) imposed on him vide order dated 13/3/91 would remain till he is found fit for promotion.
>
> Since, Shri.P.J. Bayad, AG.II(A/cs) has not

accepted promotion as AG.I(A/cs) as per office order No. 148/1994 dt.4/10/94 and since he has been debarred for promotion w.e.f. 7/10/94 vide office order No. dt. 15/2/95, there is no question of restoring of his pay AG.I(A/cs)."

. The Petitioner thereafter came to be promoted on 9.12.1996. As representation for restoration of the pay scale was not considered, the present petition.

. During the hearing of the Petition, on behalf of the Petitioner, their learned counsel submits that the reduction in the time scale in the reverted post of A.G. II would only continue till such time as the Petitioner was found fit for promotion. Once he was found fit, the earlier scale ought to have been granted to him. The reason given by the respondent for declining relief to the Petitioner is that he had declined promotion. It is submitted that the reason given that the Petitioner cannot be placed in the proper time scale is contrary to law and consequently has prayed that order be set aside and he be placed in the time scale he was drawing at the time he was reverted. It is also submitted that the order dated 13th March, 1991 had the effect of imposing double punishment, which could not have

been done. The Petitioner however, has not challenged that order and consequently we are not called upon to decide that issue.

. On the other hand, on behalf of the Respondents, it is submitted that there is no question of restoring the Petitioner’s time scale.

. We have heard the learned counsel for the parties. The relevant rule reads as under :

> "54. Penalties :
> (i).....
> (ii)......
> (iii) .....
> (iv).....
>
> Major Penalties :
>
> (v) .....
>
> (vi) reduction to a lower time-scale of pay or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of the

> Corporation was reduced and his seniority and pay on such restoration to that post....."

. The Respondent themselves by memorandum of 16.8.1996 had accepted that the Petitioner was fit for promotion, however as he had declined promotion, there was no question of restoring the pay scale. The respondent on imposing the punishment of reversion consequently had to fix the petitioner's pay in the time scale. Reduction in the time scale can be permanent or it can be for a particular period. A reading therefore, of the order dated 13.3.1991 will make it clear that the fixation of pay in the time scale was consequential to the order of reversion.

. The first question is whether in fact the Petitioner ought to have accepted the promotion to be entitled to get the benefit of restoration in the time scale. In our opinion, fit for promotion is distinct and different from actually accepting the promotion. It is possible that the employee for various reasons, where offer of promotion is given may decline the promotion. Mere fact that he was promoted would be an indication that he was fit for promotion. There is therefore, clear distinction

between being fit for promotion and actually accepting the post of promotion. The order of 16.8.1996, holding that the Petitioner must accept promotion to be entitled to restoration of pay scale can not be faulted. The Petitioner could be placed in the time scale of the promotional post only from the date he joined the promotional post.

. The question really is on being promoted, was the Petitioner entitled to be restored to the pay that he was drawing at the time he was reverted. On being reverted, the Petitioner would be placed in the time scale of the post to which he was reverted. On being promoted, he will be placed in the promotional pay scale considering the pay that he was drawing in the feeder post. The order of 13th March, 1991, does not any where say that the Petitioner would be restored to his original pay in the higher post on being found fit for promotion. The order says that he would work in the reverted post till he is found fit for promotion. In our opinion, there is no merit in the Petition.

. Rule discharged. There shall be no order as to costs.

(S.J.VAZIFDAR,J.) **(F.I.REBELLO, J.)**